



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0437; FRL-8698-02-R6]

Air Plan Approval; Oklahoma; Volatile Organic Compound Emissions in Nonattainment Areas and Former Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for Oklahoma submitted by the State of Oklahoma designee with a letter dated May 7, 2020. The submittal covers updates to the Oklahoma SIP, as contained in the State's 2019 annual SIP update. Specifically, this action addresses revisions to Oklahoma Administrative Code (OAC) Title 252 Chapter 100 Subchapter 39, Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas. There are two Oklahoma counties affected by this action: Tulsa County and Oklahoma County.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2020-0437. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Clovis Steib, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-7566, steib.clovis@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our July 22, 2021, proposal (86 FR 38627). In that document we proposed to approve revisions to the SIP for Oklahoma submitted by the State of Oklahoma with a letter dated May 7, 2020. Specifically, the action addressed revisions to OAC Title 252 Chapter 100 Subchapter 39, Sections 4, 16, 40, and 41. The revisions corrected errors and made these sections of the Oklahoma SIP consistent with EPA’s rules. The two areas in Oklahoma affected by this action are Tulsa County and Oklahoma County.

We received comments on our proposal from one commenter. Our response to the comments follows.

II. Response to Comments

Comment: One commenter stated that it is important for citizens to stay informed and be kept up to date on Federal government revisions and regulations, such as this proposed approval action on the Oklahoma SIP.

Response: Public comment is just one part of an extensive rulemaking process. It is an invaluable gateway to plug in to the regulatory process because it is required of all agencies, across statutes, for any new regulation. Under the Administrative Procedures Act (1946), Federal agencies like the EPA, are required to request comments on new

regulation proposals by all members of the public. We thank the commenter for their interest and taking the time to submit their response; as well as encouraging their fellow citizens to engage in the public comment process. No changes to the proposal were made in response to the comment.

III. Impact on Areas of Indian Country

As stated in the proposed action, following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S.Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. Law 109-59, 119 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country (as defined at 18 U.S.C. § 1151) the State's environmental regulatory programs that were previously approved by the EPA outside of Indian country.¹ The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).²

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all of the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country.³ As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles

¹ A copy of the Governor's July 22, 2020, request can be found in the docket for this rulemaking on the <https://www.regulations.gov> Web site. See Docket ID No. EPA-R06-OAR-2020-0437.

² In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

³ A copy of EPA's October 1, 2020, approval can be found in the docket for this rulemaking on the <https://www.regulations.gov> Web site. See Docket ID No. EPA-R06-OAR-2020-0437.

to which have not been extinguished, under 18 U.S.C. § 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

EPA’s approval under SAFETEA expressly provided that to the extent EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.⁴ The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).⁵

As explained above, the EPA is approving revisions to the SIP for Oklahoma submitted by the State of Oklahoma with a letter dated May 7, 2020. Specifically, the action addressed revisions to OAC Title 252 Chapter 100 Subchapter 39, Sections 4, 16, 40, and 41. The revisions corrected errors and made these sections of the Oklahoma SIP consistent with EPA’s rules. Consistent with the D.C. Circuit’s decision in *ODEQ v. EPA* and with EPA’s October 1, 2020, SAFETEA approval, this portion of the SIP applies in certain areas of Indian country. Under EPA’s October 1, 2020 SAFETEA approval, the SIP revisions approved in this rulemaking action will apply to all Indian country within

⁴ EPA’s prior approvals relating to Oklahoma’s SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the state. *See, e.g.*, 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

⁵ On December 22, 2021, the EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. *See* <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. The EPA expects to have further discussions with tribal governments and the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20-9635 (10th Cir.). The EPA may make further changes to the approval of Oklahoma’s program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval.

Tulsa and Oklahoma Counties, other than the excluded Indian country lands, as described above. Because—per the State’s request under SAFETEA—EPA’s October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the approved SIP revisions for Oklahoma County and Tulsa County will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.

IV. Environmental Justice Considerations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁶ The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”⁷ EPA is providing additional analysis of environmental justice associated with this action. We are doing so for the purpose of providing information to the public, not as a basis of our final action.

EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the affected Oklahoma and Tulsa

⁶ See <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

⁷ <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

counties area.⁸ The EPA then compared the data to the national average for each of the demographic groups.⁹ The results of the demographic analysis indicate that, for populations within Tulsa and Oklahoma counties, the percent people of color (persons who reported their race as a category other than white alone (not Hispanic or Latino)) is slightly less than the national average for Tulsa County; and slightly more than the national average for Oklahoma County (38 and 44 percent, respectively versus 40 percent). Within people of color, the percent of the population that is Black or African American alone is below the national average for Tulsa County and above the national average for Oklahoma County (10.8 and 15.8 percent, respectively versus 13.4 percent), and the percent of the population that is American Indian/Alaska Native is higher than the national average for both Tulsa and Oklahoma counties (6.9 and 4.4 percent, respectively versus 1.3 percent). The percent of the population that is “two or more races” is higher than the national average for both Tulsa and Oklahoma counties (6.2 and 5.4 percent, respectively versus 2.8 percent). The percent of people living below the poverty level in Tulsa and Oklahoma counties is higher than the national average (12.8 and 15.2 percent, respectively versus 11.4 percent). The percent of people over 25 with a high school diploma in Tulsa and Oklahoma counties is similar to the national average (89.9 and 88 percent, respectively versus 88.5 percent), as is the percent with a “bachelor’s degree or higher” (32 and 33.1 percent, respectively versus 32.9 percent).

The SIP revisions do not appear to have a disproportionately high or adverse human health or environmental effects on communities with EJ concerns as the changes to the Oklahoma SIP will result in updates and clarifications and also further restrict the use of

⁸ See the United States Census Bureau’s QuickFacts on Oklahoma at <https://www.census.gov/quickfacts/fact/table/OK,US/PST045221>.

⁹ See the United States Census Bureau’s QuickFacts on Oklahoma at <https://www.census.gov/quickfacts/fact/table/OK,US/PST045221>.

cutback asphalt. Since the use of cutback asphalt is prohibited for a longer period of time each year communities throughout the affected counties will realize benefits.

V. Final Action

We are approving revisions to OAC 252:100-39, Emission of VOCs in Nonattainment Areas and Former Nonattainment Areas, in Section 4 (Exemptions), Section 16 (Petroleum refinery process unit turnaround), Section 40 (Cutback asphalt), and Section 41 (Storage, loading and transport/delivery of VOCs) as submitted to us by a letter dated May 7, 2020 (Submittal). The submittal covers Oklahoma's 2019 regulatory update. This action is being taken under section 110 of the Act.

VI. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Oklahoma regulations, as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated in the next update to the SIP compilation.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this

action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This approval of revisions to the Oklahoma SIP will apply to certain areas of Indian country in Tulsa and Oklahoma Counties, as discussed in the preamble, and therefore has tribal implications as specified in EO 13175 (65 FR 67249, November 9, 2000).

However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA offered consultation to tribal governments that may be affected by this action. EPA received no comments or requests for consultation from tribal governments.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the ***Federal Register***. A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 20, 2022.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40

CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION
PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart LL – Oklahoma

2. In §52.1920 in paragraph (c) amend the table “EPA APPROVED OKLAHOMA
REGULATIONS” by revising the entries for “252:100-39-4,” “252:100-39-16,”
“252:100-39-40,” and “252:100-39-41” to read as follows.

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(c) * * *

EPA APPROVED OKLAHOMA REGULATIONS

State Citation	Title/Subject	State effective date	EPA approval date	Explanation
* * * * *				
OKLAHOMA ADMINISTRATIVE CODE, TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY				
CHAPTER 100 (OAC 252:100). AIR POLLUTION CONTROL				
* * * * *				
Subchapter 39. Emission of Organic Materials in Nonattainment Areas				
Part 1. General Provisions				
* * * * *				
252:100-39-4	Exemptions	9/15/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Part 3. Petroleum Refinery Operations				
* * * * *				
252:100-39-16	Petroleum refinery process unit turnaround	9/15/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

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Part 7. Specific Operations				
252:100-39-40	Cutback asphalt (paving)	9/15/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
252:100-39-41	Storage, loading and transport/delivery of VOCs	9/15/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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[FR Doc. 2022-16043 Filed: 7/28/2022 8:45 am; Publication Date: 7/29/2022]